

---

# A BILL FOR AN ACT

RELATING TO LICENSING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the practice of  
2 behavior analysis in Hawaii affects the public's health safety,  
3 and welfare. The legislature further finds that behavior  
4 analysts and the practice of behavior analysis should be subject  
5 to regulation and control to protect the public from the  
6 unqualified practice of behavior analysis and from  
7 unprofessional conduct by persons licensed to practice behavior  
8 analysis.

9           The legislature additionally finds that certain measures  
10 introduced during the regular session of 2015 provide mandated  
11 insurance coverage for the diagnosis and treatment of autism.  
12 If such legislation is ultimately enacted, it is critical that  
13 behavior analysts, who engage in the practice of behavior  
14 analysis with individuals with autism, be fully licensed.  
15 Federal requirements specify providers of services must be  
16 licensed in their profession in order to participate in  
17 medicaid. Furthermore, health insurance plans in Hawaii will



1 not provide reimbursement for services provided by behavior  
2 analysts unless those individuals are licensed in the State.

3 The legislature notes that it is imperative that the  
4 licensing of behavior analysts begin concurrently with any  
5 mandated insurance coverage for the diagnosis and treatment of  
6 autism.

7 Accordingly, the purpose of this Act is to address the  
8 urgent need for a licensing process for behavior analysts by  
9 establishing the behavior analyst program within the department  
10 of commerce and consumer affairs and establishing licensing  
11 requirements for the practice of behavior analysis by behavior  
12 analysts.

13 SECTION 2. The Hawaii Revised Statutes is amended by  
14 adding a new chapter to be appropriately designated and to read  
15 as follows:

16 **"CHAPTER**

17 **BEHAVIOR ANALYSTS**

18 **§ -1 Definitions.** For the purposes of this chapter:

19 "Applied behavior analysis" means interventions that are  
20 based on scientific research and the direct observation and  
21 measurement of behavior and the environment.



1 "Behavior Analyst Certification Board" means the  
2 international accredited Behavior Analyst Certification Board or  
3 its successor.

4 "Department" means the department of commerce and consumer  
5 affairs.

6 "Director" means the director of commerce and consumer  
7 affairs.

8 "Licensed behavior analyst" means a person:

9 (1) Who engages in the practice of behavior analysis and

10 uses the title of licensed behavior analyst;

11 (2) Who has been issued a license under this chapter; and

12 (3) Whose license is in effect and not revoked, suspended,  
13 or encumbered.

14 "Practice of behavior analysis" means the design,  
15 implementation, and evaluation of instructional and  
16 environmental modifications to produce socially significant  
17 improvements in human behavior. Practice of behavior analysis  
18 includes the empirical identification of functional relations  
19 between behavior and environmental factors, known as functional  
20 assessment and analysis. Practice of behavior analysis also  
21 includes the use of contextual factors, motivating operations,



1 antecedent stimuli, positive reinforcement, and other  
2 consequences to help people develop new behaviors, increase or  
3 decrease existing behaviors, and emit behaviors under specific  
4 environmental conditions. Practice of behavior analysis  
5 expressly excludes psychological testing, diagnosis of a mental  
6 or physical disorder, neuropsychology, psychotherapy, cognitive  
7 therapy, sex therapy, psychoanalysis, hypnotherapy, and long-  
8 term counseling as treatment modalities.

9       **§ -2 Behavior analyst program; established; personnel.**

10 (a) Notwithstanding any other law, there is established a  
11 behavior analyst program within the department to be  
12 administered by the director.

13 (b) The department may employ necessary personnel without  
14 regard to chapter 76 to assist with the implementation and  
15 continuing functions of this chapter.

16       **§ -3 License required.** (a) Beginning on January 1,  
17 2016, except as specifically provided in this chapter, no person  
18 shall engage in the practice of behavior analysis or use the  
19 title "licensed behavior analyst" or "behavior analyst" without  
20 a valid license issued pursuant to this chapter.



(b) Any person who violates this section shall be subject to a fine of not more than \$1,000 for each separate offense. Each day of each violation shall constitute a separate offense.

**§ -4 Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall have the powers and duties to:

- (1) Grant, deny, renew, refuse to renew, restore, terminate, reinstate, condition, restrict, suspend, or revoke a license issued pursuant to this chapter;
- (2) Grant permission to a person to engage in the practice of behavior analysis and to use the title of "licensed behavior analyst" or a description indicating that the person is a licensed behavior analyst in this State;
- (3) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out this chapter;
- (4) Administer, coordinate, and enforce this chapter;
- (5) Discipline a licensed behavior analyst on grounds specified by this chapter or chapter 436B or for any violation of rules adopted by the director pursuant to this chapter; and



(6) Refuse to license a person for failure to meet the licensing requirements in this chapter or for any reason specified by this chapter as grounds to discipline a behavior analyst including but not limited to violations of the Behavior Analyst Certification Board's ethical guidelines for responsible conduct.

**§ -5 Fees; disposition.** (a) Upon issuance of a new license and at each license renewal period, each behavior analyst shall pay, in addition to a license fee or renewal fee, a surcharge of \$ , which shall be maintained in a separate account within the compliance resolution fund established pursuant to section 26-9(o). At the end of each quarter, the moneys contained in the separate account established pursuant to this section shall be transferred to the compliance resolution fund until such time that the total transferred amounts equal the amount appropriated in section 4 of Act , Session Laws of Hawaii 2015. Thereafter, no surcharge shall be assessed, and any funds in excess of the amount appropriated in section 4 of Act , Session Laws of



1 Hawaii 2015, shall be deposited into the compliance resolution  
2 fund.

3 (b) Application fees paid pursuant to this chapter shall  
4 not be refundable. Pursuant to section 26-9(1), the director  
5 shall establish examination, reexamination, license, renewal,  
6 restoration, enforcement, and other fees relating to the  
7 administration of this chapter by rule.

8 (c) Fees assessed pursuant to this chapter shall be used  
9 to defray costs incurred by the department in implementing this  
10 chapter.

11 **§ -6 Exemptions.** (a) This chapter is not intended to  
12 restrict the practice of other licensed or credentialed  
13 healthcare practitioners practicing within their own recognized  
14 scopes of practice and shall not apply to:

15 (1) An individual working within the scope of practice or  
16 duties of another licensed profession that overlaps  
17 with the practice of behavior analysis; provided that  
18 the person does not purport to be a behavior analyst;

19 (2) An individual who implements or designs applied  
20 behavior analysis services and possesses board  
21 certification as an assistant behavior analyst by the



1 Behavior Analyst Certification Board and who practices  
2 in accordance with the most recent supervisory and  
3 ethical requirements adopted by the Behavior Analyst  
4 Certification Board under the direction of a behavior  
5 analyst licensed in this State;

6 (3) An individual who directly implements applied behavior  
7 analysis services, is credentialed as a registered  
8 behavior technician by the Behavior Analyst  
9 Certification Board, and is under the direction of a  
10 behavior analyst licensed in this State;

11 (4) A family member implementing an applied behavior  
12 analysis plan within the home who acts under the  
13 direction of a behavior analyst licensed in this  
14 State;

15 (5) An individual who engages in the practice of behavior  
16 analysis with nonhuman or nonpatient clients or  
17 consumers including but not limited to applied animal  
18 behaviorists and practitioners of organizational  
19 behavior management;

20 (6) A matriculated graduate student or postdoctoral fellow  
21 whose activities are part of a defined behavior





1 analysis program of study, practicum, or intensive  
2 practicum; provided that the student's or fellow's  
3 activities or practice is directly supervised by a  
4 behavior analyst licensed in this State or an  
5 instructor in a Behavior Analyst Certification Board-  
6 approved course sequence; or

7 (7) An individual pursuing experience in behavior analysis  
8 consistent with the Behavior Analyst Certification  
9 Board's experience requirements; provided that the  
10 experience is supervised by a behavior analyst  
11 licensed in this State.

12 (b) Nothing in this chapter shall be construed to prevent  
13 any licensed psychologist from engaging in the practice of  
14 behavior analysis in this State as long as the person is not in  
15 any manner held out to the public as a "licensed behavior  
16 analyst" or "behavior analyst" and the behavior analysis  
17 services provided by the licensed psychologist are within the  
18 licensed psychologist's recognized scope of practice.

19 **§ -7 Application for licensure.** The department shall  
20 issue a license under this chapter to an applicant for behavior  
21 analyst if the applicant provides satisfactory evidence to the



1 department that the applicant meets the requirements for  
2 licensure contained in this chapter and rules adopted by the  
3 director and if the applicant for behavior analyst:

4 (1) Successfully passed the Board Certified Behavior  
5 Analyst examination;

6 (2) Maintains active status with the Behavior Analyst  
7 Certification Board as a board certified behavior  
8 analyst; and

9 (3) Pays all fees for licensure established by the  
10 director.

11 **§ -8 Licensure by endorsement.** The director may issue a  
12 license by endorsement to an applicant who holds a current and  
13 unencumbered license as a behavior analyst in another state;  
14 provided that the requirements for a license in that state are  
15 deemed by the director to be equivalent to or higher than the  
16 current requirements for licensure in this State.

17 **§ -9 Renewal of license.** Licenses issued pursuant to  
18 this chapter shall be valid for two years and shall be renewed  
19 upon the payment of a renewal fee within sixty days before the  
20 expiration of the license. Failure to renew a license shall  
21 result in forfeiture of that license. Licenses that have been



1 forfeited may be restored within one year of the forfeiture date  
2 upon payment of renewal and restoration fees. Failure to  
3 restore a forfeited license within one year shall result in the  
4 automatic termination of the license. A person whose license  
5 has been terminated pursuant to this section shall be required  
6 to reapply for a new license as a new applicant.

7       **§ -10 Grounds for refusal to renew, reinstate, or**  
8 **restore a license and for denial, revocation, suspension, or**  
9 **condition of a license.** (a) In addition to any other acts or  
10 conditions provided by law, the director may refuse to renew,  
11 reinstate, or restore and may deny, revoke, suspend, or  
12 condition in any manner any license for any one or more of the  
13 following acts or conditions on the part of a licensee or  
14 license applicant:

15       (1) Failure to meet or to maintain the conditions and  
16 requirements necessary to qualify for the granting of  
17 a license;

18       (2) Engaging in false, fraudulent, or deceptive  
19 advertising, or making untruthful or improbable  
20 statements in advertising;



- 1           (3) Engaging in the practice of behavior analysis while  
2           impaired by alcohol, drugs, physical disability, or  
3           mental instability;
- 4           (4) Procuring through fraud, misrepresentation, or deceit  
5           a license to engage in the practice of behavior  
6           analysis;
- 7           (5) Aiding and abetting an unlicensed person to directly  
8           or indirectly perform activities requiring a license  
9           for the practice of behavior analysis;
- 10          (6) Engaging in professional misconduct, incompetence,  
11          gross negligence, or manifest incapacity in the  
12          practice of behavior analysis;
- 13          (7) Engaging in conduct or a practice contrary to  
14          recognized standards of the most recent ethical  
15          guidelines for the practice of behavior analysis as  
16          adopted by the Behavior Analyst Certification Board;
- 17          (8) Violating any condition or limitation imposed by the  
18          director on a license to practice behavior analysis;
- 19          (9) Engaging in the practice of behavior analysis in a  
20          manner that causes injury to one or more members of  
21          the public;



- 1       (10) Failing to comply with, observe, or adhere to any law  
2           in a manner that causes the director to determine that  
3           the applicant or holder is unfit to hold a license;
- 4       (11) Having a license revoked or suspended or other  
5           disciplinary action by any state or federal agency for  
6           any reason that is provided by the applicable  
7           licensing laws or by this section;
- 8       (12) Having been convicted or pleaded nolo contendere to a  
9           crime directly related to the qualifications,  
10          functions, or duties of the practice of behavior  
11          analysis;
- 12       (13) Failing to report in writing to the director any  
13          disciplinary decision issued against the licensee or  
14          applicant in another jurisdiction within thirty days  
15          of the disciplinary decision;
- 16       (14) Failing to report in writing to the director the  
17          Behavior Analyst Certification Board's revocation of  
18          the certification of a licensee or applicant within  
19          fifteen days of the revocation;
- 20       (15) Employing, whether gratuitously or for pay, any person  
21          not licensed pursuant to this chapter to perform the



1 functions or duties of the practice of behavior  
2 analysis; or

3 (16) Violating this chapter, chapter 436B, or any rule or  
4 order of the director.

5 (b) Any licensee or applicant who violates this section  
6 may also be fined not more than \$1,000 per violation."

7 SECTION 3. Section 26H-4, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§26H-4 Repeal dates for newly enacted professional and**  
10 **vocational regulatory programs.** (a) Any professional or  
11 vocational regulatory program enacted after January 1, 1994, and  
12 listed in this section shall be repealed as specified in this  
13 section. The auditor shall perform an evaluation of the  
14 program, pursuant to section 26H-5, prior to its repeal date.

15 (b) Chapter 466D (respiratory therapists) shall be  
16 repealed on June 30, 2016.

17 (c) Chapter 436H (athletic trainers) shall be repealed on  
18 June 30, 2018.

19 (d) Chapter (behavior analysts) shall be repealed on  
20 June 30, ."



1       SECTION 4. There is appropriated out of the compliance  
2 resolution fund established pursuant to section 26-9(o), Hawaii  
3 Revised Statutes, the sum of \$                   or so much thereof as  
4 may be necessary for fiscal year 2015-2016 and the same sum or  
5 so much thereof as may be necessary for fiscal year 2016-2017 to  
6 implement the behavior analyst program established pursuant to  
7 section 2 of this Act.

8       The sums appropriated shall be expended by the department  
9 of commerce and consumer affairs for the purposes of this Act.

10       SECTION 5. New statutory material is underscored.

11       SECTION 6. This Act shall take effect on July 1, 2015.



**Report Title:**

Licensing; Practice of Behavior Analysis; Behavior Analysts;  
Behavior Analyst Program; Department of Commerce and Consumer  
Affairs; Appropriation

**Description:**

Establishing the behavior analyst program within the department  
of commerce and consumer affairs. Establishes licensing  
requirements for behavior analysts. Appropriates funds for the  
implementation of the behavior analyst program. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*

